617 Phil. 231

THIRD DIVISION

[G.R. No. 153653, October 02, 2009]

SAN MIGUEL BUKID HOMEOWNERS ASSOCIATION, INC., HEREIN REPRESENTED BY ITS PRESIDENT, MR. EVELIO BARATA, PETITIONER, VS. THE CITY OF MANDALUYONG, REPRESENTED BY THE HON. MAYOR BENJAMIN ABALOS, JR.; A.F. CALMA GENERAL CONSTRUCTION, REPRESENTED BY ITS PRESIDENT, ARMENGO F. CALMA, RESPONDENTS.

D E C I S I O N

PERALTA, J.:

This resolves the petition for *certiorari* under Rule 65 of the Rules of Court, seeking nullification of the Resolutions of the Court of Appeals (CA) dated April 16, 2002[1] and May 14, 2002,[2] in CA-G.R. SP No. 69827, dismissing the petition for *certiorari* filed by herein petitioner.

The undisputed facts are as follows.

Petitioner San Miguel Bukid Homeowners Association, Inc. (formerly known as Bukid Neighborhood Landless Association), an association of urban poor dwellers of San Miguel Bukid Compound, Plainview, Mandaluyong City, filed with the Regional Trial Court (RTC) of Mandaluyong City a Complaint[3] for specific performance and damages against respondents City of Mandaluyong (City) and A.F. Calma General Construction (Calma). It is alleged therein that pursuant to the City's Land for the Landless Program, petitioner and the City entered into a Memorandum of Agreement (MOA), whereby the City purchased lots and then transferred the same to petitioner with a first real estate mortgage in favor of the City. Subsequently, the City and Calma entered into a Contract Agreement for the latter to construct row houses and medium-rise buildings on the aforementioned lots within 540 calendar days for the benefit of petitioner's members. In June 1995, Calma began construction, but in June 1996, work on the project was stopped. The period of 540 days elapsed sometime in November 1996, but the houses and buildings were not yet completed. Petitioner's letters sent to the Mayor of the City requesting an update on the project remained unanswered. Hence, petitioner filed the complaint praying that the City and Calma be ordered to perform their respective undertakings and obligations under the Contract Agreement and to pay petitioner attorney's fees, exemplary damages and litigation expenses.

The City filed an Answer[4] within the extended period granted by the trial court. The City's main defense was that the MOA had already been abrogated due to petitioner's failure to secure a loan from the Home Mortgage and Finance Corporation, and that petitioner had no standing or personality to institute the action, as it was not a party to the Contract Agreement.

Calma did not file an Answer.

On September 12, 2000, petitioner filed a Motion to Declare Defendant in Default. It pointed out that the lawyer who signed the City's Answer was a private counsel, not the Office of the City Legal Officer which, according to petitioner, was the only office authorized under Section 248 of the Local Government Code to represent the local government unit in all civil actions. Thus, petitioner prayed that the City be declared in default on the ground that the City's Answer was a mere scrap of paper and should not be admitted in court for being an unsigned pleading, the same not having been signed and filed by a duly authorized representative of the City.

In its Order[5] dated June 4, 2001, the RTC denied petitioner's motion, ruling that a party should only be declared in default in cases showing clear obstinate refusal or inordinate neglect in complying with the Orders of the court. Petitioner's motion for reconsideration of said order was also denied per Order[6] dated January 7, 2002.

The matter was elevated by petitioner to the CA *via* a petition for *certiorari*. However, in the assailed Resolution[7] dated April 16, 2002, the CA dismissed the petition outright because the person who signed the Verification/Certification of Non-Forum Shopping thereof did not appear to be authorized by petitioner. Petitioner filed a motion for reconsideration but the same was denied in the second assailed Resolution[8] dated May 14, 2002.

Hence, petitioner came to this Court seeking the issuance of a writ of *certiorari* against the CA, on the following grounds:

> I. THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT HELD THAT THE REPRESENTATIVE OF THE PETITIONER WHO SIGNED THE
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> VERIFICATION/CERTIFICATION OF NON-FORUM SHOPPING "DID NOT APPEAR TO BE DULY AUTHORIZED TO DO SO," WHEN IN FACT THE SAID REPRESENTATIVE WAS DULY AUTHORIZED BY THE PETITIONER CORPORATION'S BOARD OF DIRECTORS.
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> II. THE HONORABLE COURT OF APPEALS ERRED IN APPLYING THE RULING IN BA SAVINGS BANK VS. SIA (336 SCRA 484) AGAINST THE PETITIONER AND DISMISSED THE PETITION FOR CERTIORARI.
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> III. THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION IN DENYING THE MOTION FOR RECONSIDERATION WHEN IT HELD THAT THE LACK OF CERTIFICATION AGAINST FORUM SHOPPING IS GENERALLY NOT CURABLE BY THE SUBMISSION THEREOF AFTER THE FILING OF THE PETITION, WHEN IN TRUTH, WHAT WAS SUBMITTED BY PETITIONER WITH THE MOTION FOR RECONSIDERATION WAS NOT A CERTIFICATION AGAINST FORUM SHOPPING BUT A SECRETARY'S CERTIFICATE OF A BOARD RESOLUTION CONFIRMING AND RATIFYING THE AUTHORITY OF THE REPRESENTATIVE TO ACT AS SUCH.[9]

The petition is doomed to fail.

Section 1, Rule 65 of the Rules of Court states that *certiorari* may be resorted to when there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law. Thus, in *Abedes v. Court of Appeals*,[10] the Court held that:

> x x x for a petition for *certiorari* or prohibition to be granted, it must set out and demonstrate, plainly and distinctly, all the facts essential to establish a right to a writ. The **petitioner must allege in his petition and has the burden of establishing facts to show that any other existing remedy is not speedy or adequate and that** (a) the writ is directed against a tribunal, board or officer exercising judicial or quasi-judicial functions; (b) such tribunal, board or officer has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to excess or lack of jurisdiction; and, (c) **there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law. These matters must be threshed out and shown by petitioner**.[11]

The Resolutions of the CA which petitioner seeks to nullify are orders of dismissal. In *Magestrado v. People*,[12] the Court explained that an order of dismissal is a final order which is a proper subject of an appeal, not *certiorari*. This was reiterated in *Pasiona v. Court of Appeals*,[13] where it was emphasized that if what is being assailed is a decision, final order or resolution of the CA, then appeal to this Court is *via a verified petition for review on certiorari* under Rule 45 of the Rules of Court. In cases where an appeal was available, *certiorari* will not prosper, even if the ground therefor is grave abuse of discretion.[14] The existence and availability of the right of appeal are antithetical to the availability of the special civil action for *certiorari*, although where it is shown that the appeal would be inadequate, slow, insufficient, and will not promptly relieve a party from the injurious effects of the order complained of, or where appeal is inadequate and ineffectual, the extraordinary writ of *certiorari* may be granted.[15]

Clearly, since the present case involves a final order of dismissal issued by the CA, the proper course of action would have been to file a petition for review on *certiorari* under Rule 45. Although there are exceptions to the general rule, petitioner utterly failed to allege and prove that the extraordinary remedy of the writ of *certiorari* should be granted, because an appeal, although available, would be inadequate, insufficient and not speedy enough to address the urgency of the matter. There is nothing in the petition to show that this case qualifies as an exception to the general rule. The circumstances prevailing in this case reveal that whatever grievance petitioner may be suffering from the dismissal of its petition with the CA could be properly addressed through a petition for review on *certiorari*.

On the ground alone that petitioner resorted to an improper remedy, the present petition is already dismissible and undeserving of the Court's attention. However, even on the merits, the petition must be struck down.

In *Fuentebella v. Castro*,[16] the Court categorically stated that "if the real party-in-